

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 299

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Bernadette M. Sanchez

AN ACT

RELATING TO FINANCIAL INSTITUTIONS; AMENDING THE NEW MEXICO BANK INSTALLMENT LOAN ACT OF 1959 AND THE NEW MEXICO SMALL LOAN ACT OF 1955; REQUIRING THAT CONSUMER LOANS OF TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) OR LESS BE MADE UNDER THE NEW MEXICO SMALL LOAN ACT OF 1955; REQUIRING A DATABASE AND REPORTING FOR CERTAIN LOANS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 58-7-1 NMSA 1978 (being Laws 1959, Chapter 327, Section 1) is amended to read:

"58-7-1. SHORT TITLE.--~~[This act shall be known]~~ Chapter 58, Article 7 NMSA 1978 may be cited as the "New Mexico Bank Installment Loan Act of 1959"."

SECTION 2. Section 58-7-3 NMSA 1978 (being Laws 1995, Chapter 190, Section 15) is amended to read:

.182762.1

underscoring material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 "58-7-3. LOANS COVERED BY ACT.--The New Mexico Bank
2 Installment Loan Act of 1959 applies to a loan that is a
3 precomputed loan repayable in installments [~~or that is clearly~~
4 ~~identified on the loan documents as being made under that~~
5 ~~act~~]."

6 SECTION 3. Section 58-7-9 NMSA 1978 (being Laws 1959,
7 Chapter 327, Section 10, as amended) is amended to read:

8 "58-7-9. CONSTRUCTION.--

9 A. None of the provisions of the New Mexico Small
10 Loan Act of 1955 are amended or repealed by the New Mexico Bank
11 Installment Loan Act of 1959.

12 B. With the exception of precomputed loan
13 transactions, a lender is not bound by the provisions of the
14 New Mexico Bank Installment Loan Act of 1959 in making loans
15 where the loan is made in accordance with the provisions of
16 Sections 56-8-9 through 56-8-14 NMSA 1978.

17 C. None of the provisions of the New Mexico Bank
18 Installment Loan Act of 1959 apply to the assignment or
19 purchase of retail installment contracts originated under the
20 provisions of Sections 58-19-1 through 58-19-14 NMSA 1978 or
21 originated under the provisions of Sections 56-1-1 through
22 56-1-15 NMSA 1978.

23 D. In the event of a conflict between a requirement
24 of the New Mexico Bank Installment Loan Act of 1959 and a
25 requirement of the Home Loan Protection Act, the requirement of

.182762.1

underscoring material = new
~~[bracketed material] = delete~~

1 the Home Loan Protection Act shall control.

2 E. As used in the New Mexico Bank Installment Loan
3 Act of 1959:

4 (1) "year" means three hundred sixty-five
5 days; and

6 (2) "month" means one-twelfth of a year.

7 F. The director of the financial institutions
8 division of the regulation and licensing department shall issue
9 and file as required by law interpretive regulations to
10 effectuate the purposes of the New Mexico Bank Installment Loan
11 Act of 1959. In issuing, amending or repealing interpretive
12 regulations, the director shall issue the regulation amendment
13 or repeal of the regulation as a proposed regulation amendment
14 or repeal of a regulation and file it for public inspection in
15 the office of the director of the financial institutions
16 division. Distribution thereof shall be made to interested
17 persons, and their comments shall be invited. After the
18 proposed regulation has been on file for not less than two
19 months, the director may issue it as a final regulation by
20 filing as required by law. Any person who is or may be
21 adversely affected by the adoption, amendment or repeal of a
22 regulation under this section may file an appeal of that action
23 in the district court in Santa Fe county within thirty days
24 after the filing of the adopted regulation, amendment or repeal
25 as required by law.

.182762.1

underscored material = new
[bracketed material] = delete

1 G. Any person, corporation or association complying
2 with the regulations adopted by the director of the financial
3 institutions division of the regulation and licensing
4 department is deemed to have complied with the provisions of
5 the New Mexico Bank Installment Loan Act of 1959.

6 H. ~~[All loans other than precomputed]~~ A loan
7 ~~[transactions]~~ transaction made ~~[under]~~ pursuant to the New
8 Mexico Bank Installment Loan Act of 1959 shall be clearly
9 identified on the loan documents as being made ~~[under]~~ pursuant
10 to that act."

11 SECTION 4. Section 58-15-2 NMSA 1978 (being Laws 1955,
12 Chapter 128, Section 2, as amended) is amended to read:

13 "58-15-2. DEFINITIONS.--The following words and terms
14 when used in the New Mexico Small Loan Act of 1955 have the
15 following meanings unless the context clearly requires a
16 different meaning. The meaning ascribed to the singular form
17 applies also to the plural:

18 A. "consumer" means a person who enters into a loan
19 agreement and receives the loan proceeds in New Mexico;

20 B. "consumer loan" means a loan to a consumer for
21 personal, family or household purposes, but "consumer loan"
22 does not include a loan secured by a lien on real property, a
23 loan for educational, commercial or business purposes of the
24 consumer or a loan made pursuant to the Motor Vehicle Sales
25 Finance Act;

.182762.1

underscoring material = new
[bracketed material] = delete

1 ~~[B-]~~ C. "debit authorization" means an
2 authorization signed by a consumer to electronically transfer
3 or withdraw funds from the consumer's account for the specific
4 purpose of repaying a loan;

5 ~~[G-]~~ D. "department" or "division" means the
6 financial institutions division of the regulation and licensing
7 department;

8 ~~[D-]~~ E. "director" means the director of the
9 division;

10 ~~[E-]~~ F. "installment loan" means a loan that is to
11 be repaid in a minimum of four successive substantially equal
12 payment amounts to pay off ~~[a]~~ that loan in its entirety with a
13 period of no less than one hundred twenty days to maturity.
14 "Installment loan" does not mean a loan in which a licensee
15 requires, as a condition of making the loan, the use of
16 postdated checks or debit authorizations for repayment of that
17 loan;

18 ~~[F-]~~ G. "license" means a permit issued under the
19 authority of the New Mexico Small Loan Act of 1955 to make
20 loans and collect charges therefor strictly in accordance with
21 the provisions of that act at a single place of business. It
22 shall constitute and shall be construed as a grant of a
23 revocable privilege only to be held and enjoyed subject to all
24 the conditions, restrictions and limitations contained in the
25 New Mexico Small Loan Act of 1955 and lawful regulations

.182762.1

underscoring material = new
~~[bracketed material] = delete~~

1 promulgated by the director and not otherwise;

2 ~~[G.]~~ H. "licensee" means a person to whom one or
3 more licenses have been issued pursuant to the New Mexico Small
4 Loan Act of 1955 upon the person's written application electing
5 to become a licensee and consenting to exercise the privilege
6 of a licensee solely in conformity with the New Mexico Small
7 Loan Act of 1955 and the lawful regulations promulgated by the
8 director under that act and whose name appears on the face of
9 the license;

10 ~~[H.]~~ I. "payday loan" means a loan in which the
11 licensee accepts a personal check or debit authorization
12 tendered by the consumer and agrees in writing to defer
13 presentment of that check or use of the debit authorization
14 until the consumer's next payday or another date agreed to by
15 the licensee and the consumer and:

16 (1) includes any advance of money or
17 arrangement or extension of credit whereby the licensee, for a
18 fee, finance charge or other consideration:

19 (a) accepts a dated personal check or
20 debit authorization from a consumer for the specific purpose of
21 repaying a payday loan;

22 (b) agrees to hold a dated personal
23 check or debit authorization from a consumer for a period of
24 time prior to negotiating or depositing the personal check or
25 debit authorization; or

.182762.1

underscored material = new
[bracketed material] = delete

1 (c) pays to the consumer, credits to the
2 consumer's account or pays another person on behalf of the
3 consumer the amount of an instrument actually paid or to be
4 paid pursuant to the New Mexico Small Loan Act of 1955; but

5 (2) does not include:

6 (a) an overdraft product or service
7 offered by a banking corporation, savings and loan association
8 or credit union; and

9 (b) installment loans;

10 [~~F.~~] J. "payday loan product" means a payday loan
11 or a payment plan pursuant to Section 58-15-35 NMSA 1978;

12 [~~J.~~] K. "person" includes an individual, copartner,
13 association, trust, corporation and any other legal entity;

14 [~~K.~~] L. "renewed payday loan" means a loan in which
15 a consumer pays in cash the administrative fee payable under a
16 payday loan agreement and refinances all or part of the unpaid
17 principal balance of an existing payday loan with a new payday
18 loan from the same licensee. A "renewed payday loan" includes
19 a transaction in which a consumer pays off all or part of an
20 existing payday loan with the proceeds of a payday loan from
21 the same licensee; and

22 [~~L.~~] M. "simple interest" means a method of
23 calculating interest in which the amount of interest is
24 calculated based on the annual interest rate disclosed in the
25 loan agreement and is computed only on the outstanding

.182762.1

underscored material = new
[bracketed material] = delete

1 principal balance of the loan."

2 SECTION 5. Section 58-15-3 NMSA 1978 (being Laws 1955,
3 Chapter 128, Section 3, as amended) is amended to read:

4 "58-15-3. APPLICABILITY OF ACT--EXEMPTIONS--EVASIONS--
5 PENALTY.--

6 A. A person shall not engage in the business of
7 lending in amounts of two thousand five hundred dollars
8 (\$2,500) or less for a loan without first having obtained a
9 license from the director. Nothing contained in this
10 subsection shall restrict or prohibit a licensee under the New
11 Mexico Small Loan Act of 1955 from making loans in any amount
12 under the New Mexico Bank Installment Loan Act of 1959 in
13 accordance with the provisions of Section 58-7-2 NMSA 1978;
14 provided, however, that consumer loans in an amount of two
15 thousand five hundred dollars (\$2,500) or less shall be made
16 only pursuant to the New Mexico Small Loan Act of 1955.

17 B. Nothing in the New Mexico Small Loan Act of 1955
18 shall apply to a person making individual advances of two
19 thousand five hundred dollars (\$2,500) or less under a written
20 agreement providing for a total loan or line of credit in
21 excess of two thousand five hundred dollars (\$2,500).

22 C. A banking corporation, savings and loan
23 association or credit union operating under the laws of the
24 United States or of a state shall be exempt from the licensing
25 requirements of the New Mexico Small Loan Act of 1955, nor

.182762.1

underscoring material = new
~~[bracketed material] = delete~~

1 shall that act apply to business transacted by any person under
2 the authority of and as permitted by any such law nor to any
3 bona fide pawnbroking business transacted under a pawnbroker's
4 license nor to bona fide commercial loans made to dealers upon
5 personal property held for resale. Nothing contained in the
6 New Mexico Small Loan Act of 1955 shall be construed as
7 abridging the rights of any of those exempted from the
8 operations of that act from contracting for or receiving
9 interest or charges not in violation of an existing applicable
10 statute of this state.

11 D. The provisions of Subsection A of this section
12 apply to:

13 (1) a person who owns an interest, legal or
14 equitable, in the business or profits of a licensee and whose
15 name does not specifically appear on the face of the license,
16 except a stockholder in a corporate licensee; and

17 (2) a person who seeks to evade its
18 application by any device, subterfuge or pretense whatsoever,
19 including but not thereby limiting the generality of the
20 foregoing:

21 (a) the loan, forbearance, use or sale
22 of credit (as guarantor, surety, endorser, comaker or
23 otherwise), money, goods or things in action;

24 (b) the use of collateral or related
25 sales or purchases of goods or services or agreements to sell

underscoring material = new
~~[bracketed material] = delete~~

1 or purchase, whether real or pretended;

2 (c) receiving or charging compensation
3 for goods or services, whether or not sold, delivered or
4 provided; and

5 (d) the real or pretended negotiation,
6 arrangement or procurement of a loan through any use or
7 activity of a third person, whether real or fictitious.

8 E. A person, copartnership, trust or a trustee or
9 beneficiary thereof or an association or corporation or a
10 member, officer, director, agent or employee thereof who
11 violates or participates in the violation of a provision of
12 Subsection A of this section is guilty of a petty misdemeanor
13 and upon conviction shall be sentenced pursuant to the
14 provisions of Subsection B of Section 31-19-1 NMSA 1978. A
15 contract or loan in the making or collection of which an act is
16 done that violates Subsection A or D of this section is void
17 and the lender has no right to collect, receive or retain any
18 principal, interest or charges whatsoever."

19 **SECTION 6.** Section 58-15-20 NMSA 1978 (being Laws 1955,
20 Chapter 128, Section 18, as amended) is amended to read:

21 "58-15-20. FEES AND COSTS.--

22 A. Notwithstanding any provision of the New Mexico
23 Small Loan Act of 1955, lawful fees, if any, actually and
24 necessarily paid out by the licensee to a public officer for
25 the filing, recording or releasing in a public office of an

.182762.1

underscored material = new
[bracketed material] = delete

1 instrument securing the loan may be charged to the borrower.

2 B. Notwithstanding any provision in a note or other
3 loan contract taken or received pursuant to the provisions of
4 the New Mexico Small Loan Act of 1955, attorney fees shall not
5 be charged or collected except when the note or other contract
6 has been submitted in good faith to an attorney for collection
7 and after diligent and good-faith effort to collect on the part
8 of the licensee has failed.

9 C. Notary fees incident to the taking of a lien to
10 secure a small loan or releasing such a lien shall not be
11 charged or collected by a licensee, an officer, agent or
12 employee of a licensee or anyone within an office, room or
13 place of business in which a small loan office is conducted.

14 D. Delinquency fees shall not exceed five cents
15 (\$.05) for each one dollar (\$1.00) of each installment more
16 than ten days in arrears; provided that the total of
17 delinquency charges on any such installment shall not exceed
18 ten dollars (\$10.00) and that only one delinquency charge shall
19 be made on any one installment regardless of the period during
20 which the installment remains unpaid.

21 E. Upon the execution of a consumer loan agreement,
22 the licensee may impose an administrative fee not to exceed the
23 amount necessary to cover the fee for submitting information
24 regarding the consumer and the consumer loan to a database
25 reporting service required pursuant to the New Mexico Small

.182762.1

underscoring material = new
[bracketed material] = delete

1 Loan Act of 1955."

2 SECTION 7. Section 58-15-39 NMSA 1978 (being Laws 2007,
3 Chapter 86, Section 21) is amended to read:

4 "58-15-39. DUTIES OF DIVISION.--

5 A. The division shall:

6 (1) maintain a list of licensees, which list
7 shall be available to interested persons and the public; and

8 (2) establish a complaint process whereby an
9 aggrieved consumer or other person may file a complaint against
10 a licensee.

11 B. The division shall annually provide a report to
12 the legislature detailing statistics, including data adequate
13 to obtain an accurate understanding of the practices,
14 demographics and legal compliance of all licensees licensed in
15 the state. The division shall compile an annual report by
16 October 1 of each year containing, at a minimum, data regarding
17 all payday loan products entered into in the preceding calendar
18 year on an aggregate basis. Annual reports shall be made
19 available to interested parties and the general public and
20 published on the division's web site. Consistent with state
21 law, the report shall include, at a minimum, nonidentifying
22 consumer data from the preceding year, including:

23 (1) the total number and dollar amount of
24 payday loan products entered into in the calendar year ending
25 December 31 of the previous year;

.182762.1

underscored material = new
~~[bracketed material] = delete~~

1 (2) the total number and dollar amount of
2 payday loan products outstanding as of December 31 of the
3 previous year;

4 (3) the effective annualized percentage rate
5 and the average number of days of a payday loan during the
6 calendar year ending December 31 of the previous year;

7 (4) the number of payday loan products entered
8 into in the amount of one hundred dollars (\$100) or less, the
9 number of payday loan products entered into in the amount of
10 one hundred one dollars (\$101) to five hundred dollars (\$500),
11 the number of payday loan products entered into in the amount
12 of five hundred one dollars (\$501) to one thousand dollars
13 (\$1,000), the number of payday loan products entered into in
14 the amount of one thousand one dollars (\$1,001) to one thousand
15 five hundred dollars (\$1,500), the number of payday loan
16 products in ~~[the]~~ an amount ~~[of]~~ greater than one thousand five
17 hundred dollars (\$1,500) and the percentage of total payday
18 loan products entered into in each of those ranges;

19 (5) an estimate of the total dollar amount of
20 fees collected for payday loan products;

21 (6) the total number of payday loan products
22 entered into and the total dollar amount of the net charge-offs
23 or write-offs and of the net recoveries of licensees;

24 (7) the minimum, maximum and average dollar
25 amounts of payday loan products entered into in the calendar

.182762.1

underscored material = new
[bracketed material] = delete

1 year ending December 31 of the previous year;

2 (8) the average payday loan product amount,
3 average number of transactions and average aggregate payday
4 loan product amount entered into per consumer each year;

5 (9) the average number of days a consumer is
6 engaged in a payday loan product each year;

7 (10) an estimate of the average total fees
8 paid by a payday loan product consumer;

9 (11) the number of consumers who are eligible
10 for payment plans and the number of consumers who enter into
11 payment plans pursuant to Section 58-15-35 NMSA 1978; and

12 (12) the number of consumers who are subject
13 to the restrictions of the waiting period pursuant to Section
14 [~~58-17-36~~] 58-15-36 NMSA 1978.

15 C. The division shall compile an annual report by
16 October 1 of each year containing, at a minimum, data regarding
17 all loans made pursuant to the New Mexico Small Loan Act of
18 1955 other than payday loan products entered into in the
19 preceding calendar year on an aggregate basis. Annual reports
20 shall be made available to interested parties and the general
21 public and published on the department's web site. Consistent
22 with state law, the report shall include, at a minimum,
23 nonidentifying consumer data from the preceding year,
24 including:

25 (1) the total number and dollar amount of

.182762.1

underscored material = new
[bracketed material] = delete

1 loans entered into in the calendar year ending December 31 of
2 the previous year;

3 (2) the total number and dollar amount of
4 loans outstanding as of December 31 of the previous year;

5 (3) the effective annualized percentage rate
6 and the average number of days of a loan during the calendar
7 year ending December 31 of the previous year;

8 (4) the number of loans entered into in the
9 amount of five hundred dollars (\$500) or less, the number of
10 loans entered into in the amount of five hundred one dollars
11 (\$501) to one thousand dollars (\$1,000), the number of loans
12 entered into in the amount of one thousand one dollars (\$1,001)
13 to three thousand dollars (\$3,000), the number of loans entered
14 into in the amount of three thousand one dollars (\$3,001) to
15 five thousand dollars (\$5,000), the number of loans in an
16 amount greater than five thousand dollars (\$5,000) and the
17 number of loans listed by licensee entered into in each of
18 those ranges;

19 (5) the total dollar amount of interest and
20 fees collected for loans;

21 (6) the total dollar amount of the net
22 charge-offs or write-offs and of the net recoveries of
23 licensees;

24 (7) the minimum, maximum and average dollar
25 amounts of loans entered into in the calendar year ending

.182762.1

underscored material = new
[bracketed material] = delete

1 December 31 of the previous year;

2 (8) the average loan amount, average number of
3 transactions and average aggregate loan amount entered into per
4 consumer each year; and

5 (9) the number of loans made to renew existing
6 accounts, the number of loans made to former customers and the
7 number of loans made to new customers."

8 SECTION 8. A new section of the New Mexico Small Loan Act
9 of 1955 is enacted to read:

10 "[NEW MATERIAL] LOAN DATABASE.--

11 A. Within five business days of executing a loan
12 agreement with a consumer, receiving a payment on behalf of a
13 consumer, a default by a consumer or any collection effort by a
14 licensee, a licensee shall provide to one or more database
15 reporting services the information set forth in Paragraph (1)
16 of Subsection C of this section. Licensees shall comply with
17 the provisions of this section for all loans executed on or
18 after November 1, 2011.

19 B. No later than November 1, 2011, the director
20 shall certify that one or more database reporting services are
21 commercially reasonable methods of collecting and reporting
22 information regarding loans made pursuant to the New Mexico
23 Small Loan Act of 1955. The list of database reporting
24 services that the director has certified as providing
25 commercially reasonable methods of collecting and reporting

.182762.1

underscoring material = new
~~[bracketed material] = delete~~

1 information regarding loans made pursuant to the New Mexico
2 Small Loan Act of 1955 shall be posted on the division's web
3 site and shall be mailed to each licensee by first class mail
4 at the address of record as shown on the division's licensing
5 files.

6 C. In certifying a commercially reasonable method
7 of collecting and reporting information regarding loans made
8 pursuant to the New Mexico Small Loan Act of 1955, the director
9 shall ensure that the database reporting service:

10 (1) requires licensees to enter the following
11 information in a manner provided by rule adopted pursuant to
12 the New Mexico Small Loan Act of 1955:

13 (a) the consumer's unique identifier;

14 (b) whether the loan is a new loan, a
15 renewal of an existing loan or an extension of an existing
16 loan;

17 (c) information on any security or
18 collateral for the loan;

19 (d) the amount of the loan;

20 (e) the contract rate of interest
21 charged and the annual percentage rate;

22 (f) the nature and amount of all fees
23 charged other than interest;

24 (g) the maturity of the loan;

25 (h) the repayment terms of the loan;

.182762.1

1 (i) the dates on which loan repayments
2 were made, the nature and amount of each repayment, the date on
3 which the loan was paid in full and the total amount of
4 interest collected;

5 (j) the date of a notice of default;

6 (k) the nature and amount of fees to be
7 collected in the event of default;

8 (l) the amount recovered through
9 collection; and

10 (m) the amount of principal, interest
11 and fees charged off;

12 (2) contains a regulator interface that allows
13 the division access to the database reporting service for the
14 required monitoring and reporting function, including the
15 ability to generate reports for licensee examinations,
16 regulatory reporting and program monitoring;

17 (3) provides adequate safeguards to ensure
18 that consumer information contained in the database is kept
19 strictly confidential;

20 (4) ensures that information submitted to the
21 database is kept confidential and shall not be released or
22 otherwise made available to the public;

23 (5) demonstrates a working system to the
24 division prior to the certification of the database; and

25 (6) is generated by a registered consumer

underscoring material = new
~~[bracketed material] = delete~~

1 reporting service that is subject to the applicable rules and
2 regulations applied by the federal trade commission under the
3 federal Fair Credit Reporting Act.

4 D. In determining whether a database reporting
5 service should be certified as a commercially reasonable method
6 of collecting and reporting information regarding loans made
7 pursuant to the New Mexico Small Loan Act of 1955, the director
8 shall consider whether the database reporting service is
9 adequately capitalized, demonstrates the resources and the
10 ability to perform the services required pursuant to this
11 section and has appropriate surety to ensure performance of its
12 obligations pursuant to this section and to protect claimants
13 reasonably in the event that actions or inactions on the part
14 of the database reporting service result in damages to
15 licensees or consumers.

16 E. The provisions of Section 14-7-1 NMSA 1978 shall
17 not apply to access by the division to information for purposes
18 of compliance monitoring or preparation of reports contained in
19 a certified database established pursuant to this section.

20 F. The provisions of this section do not apply to
21 payday loans."

22 **SECTION 9. EFFECTIVE DATE.**--The effective date of the
23 provisions of this act is November 1, 2011.